

Service Date: March 29, 1991

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER OF The Application)	UTILITY DIVISION
of US West Communications for)	
Approval of an Alternative Form)	DOCKET NO. 90.12.86
of Regulation.)	

In the Matter of the Application)	
of U S West Communications for)	DOCKET NO. 89.8.28
Authority to Offer Dual Service as)	
a Service Product.)	

In the Matter of the Application)	
of U S West Communications for)	
Authority to add Integrated)	DOCKET NO. 89.8.35
Services Digital Network to its)	
Montana Tariff.)	

In the Matter of the Application)	
of U S West Communications, Inc.,)	
for the Addition of Six New Custom)	DOCKET NO. 89.9.29
Calling Features Open Network)	
Architecture (ONA)-.)	

In the Matter of the Application)	
of U S West Communications for)	DOCKET NO. 90.5.32
Authority to Add Digital Switched)	
Service to its Montana Tariff.)	ORDER NO. 5535a

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PROCEDURAL ORDER

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Introduction

Following an Informal Scheduling Conference and under the authority of ARM Section 38.2.2702, the Commission enters this order setting forth the procedure to be followed in Docket No. 90.12.86.

In this Order the term "parties" includes the Applicant, US West Communications (USWC) and all intervenors. Individuals or entities are not parties unless they have been granted intervention by the Commission.

Copies of pleadings, motions, discovery requests, prefiled testimony and briefs shall be filed with the Commission and served on all parties. Copies of all discovery responses shall be served on the Commission, on the party making the discovery requests and on parties who request the responses pursuant to paragraph 6 of this Order. In the case of a filing directed to the Commission, such as motions, testimony and briefs, the original and ten copies shall be filed with the Commission. Service upon the parties shall be upon the parties' attorney of record and such other individuals as may be reasonably designated by the attorney of record. All Documents filed with the Commission must be punched for a 3-Hole binder. All pre-filed testimony (direct, intervenor, rebuttal, etc.) must be filed on "calendar paper" (numbered lines and pages).

Schedule

All dates listed in the following schedule are mailing dates. Parties must mail all material by the most expeditious method available at reasonable cost. Documents sent on the last date allowed must be sent by Express Mail:

- (a) May 1, 1991: Final day for timely filing of Petitions to Intervene by persons who are interested in and directly affected by this Docket.
- (b) June 21, 1991: Final day for written discovery directed to USWC.
- (c) July 12, 1991: Final day for service by USWC of all answers and responses to written discovery directed to USWC by other parties pursuant to paragraph 3(b).
- (d) August 2, 1991: Final day for service of intervenor testimony.
- (e) August 16, 1991: Final day for intervenor discovery to parties other than USWC.
- (f) September 6, 1991: Final day for service of answers by all parties to intervenor discovery made pursuant to paragraph 3(e).
- (g) September 20, 1991: Final day for service of rebuttal testimony; target date for PSC identification of new issues.
- (h) October 11, 1991: Final day for written discovery directed to all parties that filed rebuttal testimony pursuant to paragraph 3(g); final day for service of testimony by USWC on new issues identified by PSC.
- (i) October 25, 1991: Final day for service of answers by all parties to rebuttal testimony discovery pursuant to paragraphs 3(h); final day for written discovery on new issues directed to all parties.
- (j) November 8, 1991: Final day for service of answers by all parties to discovery on new issues pursuant to paragraph 3(i).
- (k) November 29, 1991: Final day for service of intervenor testimony on new issues.
- (l) December 13, 1991: Final day for written discovery directed to all parties that filed intervenor testimony pursuant to paragraph 3(k).
- (m) December 31, 1991: Final day for service of answers by all parties to discovery made pursuant to paragraph 3(l).
- (n) January 6, 1992: Opening day of hearing (including live rebuttal by USWC on PSC issues), to continue from day to day until concluded.

Intervention

The Notice of Application set an intervention deadline of February 20, 1991 in this Docket. The time for intervention is hereby extended to May 1, 1991. Parties seeking to intervene after May 1, 1991 must file a Petition pursuant to ARM 38.2.2401 et seq. containing the following information: (A) the position that the intervenor will take if the intervention is granted, (B) that the proposed intervenor has an interest in and is directly affected by this Docket, (C) that the intervention, if granted, will not delay or prejudice the proceeding in the Docket, and (D) good cause why the petition was not timely filed.

Discovery

The term "discovery" as used in this order includes all forms of discovery authorized by the Montana Rules of Civil Procedure, as well as informal "data requests."

The Commission urges all parties to conduct their discovery as much as possible through the use of data requests.

Written discovery and data requests will be served on all parties (and the Commission). This should serve to reduce the number of duplicate requests in subsequent rounds of discovery. Unless otherwise agreed between individual parties, copies of answers to all written discovery and data requests will be served only on parties specifically requesting them and on the Commission. In this connection only, the term "parties" includes the parties, their attorneys, and witnesses testifying on matters to which the answers relate, who are not located in the same town as the party. If any party wants material requested by any other party, it should so inform the party to whom the data requests or written discovery is directed. The Commission encourages all parties to scrutinize carefully the material that has been provided in the Docket prior to submitting data requests. This should serve to ease the burden on those parties answering data requests.

All data requests submitted by a party must be consecutively numbered, regardless of the party to which the request is addressed. Separate "sets" of data requests should not be utilized. Each response must begin on a new page. Parties must answer all data requests in a full and complete manner. Simply referring to another data request response will be deemed unresponsive. Attachments that have been submitted in response to a previous request may be incorporated into following responses by reference, if the prior response and attachments have been submitted to all parties.

Parties receiving written discovery or data requests have seven (7) business days from receipt of the same, or until a response is due, whichever is less, within which to voice any objections it has to the request. The objection and notice thereof shall be served upon the Commission and all parties of record. The Commission may dispose of such objections by prompt ruling, or may schedule arguments on the objections. Failure

to object promptly will be deemed acceptance of the requests, and a waiver of any objections.

In the event any requesting party is dissatisfied with the response to any written discovery or data request, such party must, within seven (7) business days after receipt of such response, serve in writing upon the Commission, and simultaneously upon all parties of record, its objections to such response. The Commission may dispose of such objections by prompt ruling, or may schedule argument on the objections. Unless an agreement is reached between the parties, the Commission will issue its order either sustaining or overruling the objections. If objections are sustained, a time period will be set within which a satisfactory response must be made.

Submission of written discovery or data requests after the period established for the same will only be allowed by leave of the Commission. Such requests will not be permitted unless the party making the request shows good cause as to why the requests were not submitted within the time period allowed. Unless a shorter period is provided by the procedural schedule, or unless otherwise agreed to by the parties (the party sending the data requests and the party to whom the data requests are directed) all responses to data requests must be served within 21 days after they are received.

Unless excused by the Commission, failure by a party to answer data requests or other discovery from any party may result in:

- (a) An order refusing to allow the disobedient party to support or oppose related claims, or prohibiting him from introducing related matters in evidence;
- (b) An order striking pleadings, testimony or parts thereof, or staying further proceedings until the request is satisfied, or dismissing the action or proceeding or any part thereof.

Data Request Format

The Commission directs all parties to prepare data requests according to the following guidelines:

- (a) All data requests must include at the beginning of each request a short description (50 characters or less) explaining the subject of the data request. Other identifying information, such as the witness to whom the request is submitted, exhibit no., page no., etc., may be included in addition to, but not in lieu of, the subject of the request. This requirement will help the

Commission to identify more quickly all data requests and responses addressing a particular subject or group of subjects. Subject descriptions will obviously vary from one party to another. However, each party should attempt to keep descriptions consistent from one request to another.

- (b) Multi-part requests may be used. Each part of a multi-part request should be denoted by a lower case letter (a, b, c, etc.). Requests should be limited to five (a-e) parts. If additional parts are necessary, additional requests should be made. A single part request should be denoted by the request number only.

Examples of acceptable and unacceptable data requests are as follows:

Acceptable Data Request Format

PSC-500 RE: Purchased Gas Contracts
Witness - Burke, Page JBB-4, Lines 13-15.

Please provide the origination and expiration date for each contract.

PSC-501 RE: Bypass
Witness - Johnson, Page DAJ-14, Lines 11-14.

- a. What risks of bypass would be avoided by the shareholders as a result of the Company's proposed treatment?

- b. What risks of bypass would be avoided by the ratepayers as a result of the Company's proposed treatment?
- c. What risks of bypass would be shared by ratepayers and shareholders as a result of the Company's proposed treatment?

Unacceptable Data Request Formats

PSC-502 RE: Witness - Burke, Page. JBB-4, Lines 13-15.

- 1. Please provide the origination date for each contract.
- 2. Please provide the expiration date for each contract.

PSC-503 RE: Bypass
Witness - Johnson, Page DAJ-14, Lines 11-14.

- a. What risks of bypass would be avoided by the shareholders as a result of the Company's proposed treatment?
 - 1. What risks of bypass would be avoided by the ratepayers as a result of the Company's proposed treatment?
 - 2. What risks of bypass would be shared by ratepayers and shareholders as a result of the Company's proposed treatment?

PSC-504 RE: Core vs Noncore Customers

- a. What benefits will the core customers enjoy that will be unavailable to noncore customers?
- b. What barriers will exist to discourage customers from flip-flopping between core and noncore status?
- c. Please identify and quantify all additional costs that will be experienced to identify and serve potential noncore customers.
- d. Please identify and quantify potential additional revenues that could result from the separation of noncore from core customers.

- e. Please fully define the difference between a core and a noncore customer.
- f. On average, is the core customer's demand more elastic or less elastic than the noncore customer's?

All parties submitting data requests must also submit a "data request recap sheet" which includes the name of the party submitting the data requests, the docket number, the party to whom the requests are directed, a brief description of the subject of each data request (50 characters or less), discovery type [testimony (T), rebuttal (R), surrebuttal (S) or other (O), and the name of the witness to whom each request is directed.

The following is provided as an example of the correct form for the recap sheet:

Docket No. 90.12.86
Montana Consumer Counsel Data Requests

MCC to USWC

- 1. (a-c) (T) Cost of Service Witness: Bowman
- 2. (S) Low Income Telephone Assistance Witness: Smith
- 3. (a-e) (O) Switch Technology Witness: Jones

MCC to Dept. of Defense

- 4. (T) Private Line Services Witness: Unknown
- 5. (a-b) (R) Cost of Capital Witness: Johnson

The original and four (4) copies of all responses to data requests must be filed with the Commission.

Testimony and Evidence

The Commission contemplates a progressive narrowing of issues as prefiled testimony proceeds from direct to rebuttal. Introduction of new issues or data in new areas will be carefully scrutinized and disallowed unless reasonably related to issues earlier identified in the application, in Commission orders or in testimony prefiled in conformance with this order.

At the hearing, prefiled direct, intervenor and rebuttal testimony will be adopted into the record without the need of recitation by the witness. This procedure will eliminate retyping of prepared testimony into the hearing transcript.

All proposed exhibits and prefiled written testimony shall be marked for the purposes of identification prior to the start of the hearing. Parties shall arrange in advance with the court reporter the manner of identifying their exhibits.

When cross-examination is based on a document, not previously filed with the Commission, copies of the document will be made available to the Commission and staff unless good cause is shown why copies are not available. Parties introducing data requests or other discovery must have copies of each request and response available at the hearing for the court reporter, each Commissioner, the Commission staff, and all parties. This last requirement may be waived if the documents to be introduced are bulky, or for other good cause, and if previous arrangements have been made with the Commission and all parties.

Parties may be permitted to present "live" rebuttal testimony only if it is in direct response to an issue raised for the first time in cross-examination or the testimony

of a public witness. Such testimony will be allowed only by leave of the Commission or the presiding officer.

Citizens and citizen groups will, in the discretion of the Commission, be allowed to make statements without having submitted prepared written testimony; in addition, if they have prepared written testimony they may read it if they desire, or they may have it adopted directly into the record.

The Montana Rules of Evidence will be applied at the hearing. The parties may waive formal procedures by joint stipulation pursuant to § 2-4-603, MCA.

Prehearing Motions, Stipulations and Conferences

Motions by any party, including motions to strike prefiled testimony and motions concerning any procedural matter connected with this docket shall be raised at the earliest possible time. Prehearing motions shall be submitted on briefs unless otherwise requested by a party. If oral argument is requested, and the request is granted, the party requesting oral argument shall notice the same for hearing before the Commission.

If deemed necessary, the parties may request a prehearing conference. The Commission may also set a prehearing conference on its own motion. At a prehearing conference, there may be discussed, among other things, the feasibility of settlement of any issues in the proceeding, simplification of issues, discovery, the possibility of obtaining admissions of fact and documents, the distribution and marking of written testimony and exhibits prior to the hearing, hearing procedure, evidentiary objections, prehearing motions

and such other matters as may aid in the disposition of the proceeding or settlement thereof.

Commission and Commission Staff Investigation

The Commission reserves the right, for itself and for its staff, to submit data requests to the parties for the purpose of acquiring information related to the issues in this docket. Written information, provided in response to Commission, or Commission staff data requests, will be part of the record in this docket, unless specific objection is made to its inclusion, and such objection is granted by the Commission.

Nothing in this order shall be construed to limit the legally established right of the Commission or its staff to inspect the books and accounts of USWC at any time.

Witness Sequence List

At least seven (7) days before the hearing date, USWC shall provide the Commission with a complete witness list indicating the sequence that witnesses will be called by all parties at the hearing. It shall be the responsibility of parties to this Docket to negotiate among themselves the witness sequence. USWC shall inform the Commission and parties of the final sequence in writing or by telephone directed to the parties' attorney of record and the Commission staff attorney.

Proprietary Information

In MPSC Docket No. 88.1.2, the Commission issued six procedural requirements which USWC must satisfy when it files proprietary information in a Docket. See PSC Order No. 5354d, Finding of Fact No. 40 and PSC Order No. 5354e, Finding of Fact No. 6. These requirements are summarized below:

- a) At the beginning of each proceeding before this Commission, USWC shall submit the name of an officer and/or manager designated by that officer to aid in the resolution of all questions regarding the designation of proprietary materials.
- b) Each item of proprietary information submitted by USWC will be accompanied by a detailed explanation outlining why the information constitutes a trade secret, including a description of how the information could be used to devalue the Company's competitive position. Generic or canned explanations will not suffice.
- c) All proprietary information must be submitted on yellow paper to aid in identification and proper filing.
- d) Every other month during a proceeding and two weeks before a scheduled hearing, USWC shall provide a summary listing of all proprietary information submitted by the Company. The listing must contain columns that sequentially number the information, state why the information was filed, describe to what the information pertains, show when it was filed, disclose the number of pages for each item, and list the parties that were supplied with the information.

- e) The Company shall keep in a secured storage facility copies of all proprietary information which are part of a record in any proceeding before this Commission. At the request of the Commission or MCC, the Company will be required to provide within five working days any information stored therein. The Company must petition and receive approval from the Commission prior to removing or destroying any of the stored proprietary information.
- f) Within 60 days of admittance of proprietary information into a Commission record, the Company shall submit to the Commission indexed and organized microfiche copies of all admitted proprietary information.

Please note that parties other than USWC must only comply with requirement (c) above with respect to proprietary data which they may file. Please note that this constitutes an amendment of Paragraph 12 of the Protective Order issued by the Commission on December 28, 1990. Order No. 5535, pp. 9-10.

Other Dockets

The Commission has previously issued Interim Orders in the following USWC Dockets:

<u>Caption</u>		<u>Docket</u>		<u>Order</u>
		<u>No.</u>	<u>No.</u>	
In the Matter of the Application of U S West Communications for Authority to Offer Dual Service as a Service Product	89.8.28	5424		
In the Matter of the Application of U S West Communications for Authority to add Integrated Services Digital Network to its Montana Tariff	89.8.35		5468	
In the Matter of the Application of U S West Communications, Inc., for the Addition of Six New Custom Calling Features Open Network Architecture (ONA)~	89.9.29	5467		
In the Matter of the Application of U S West Communications for Authority to Add Digital Switched Service to its Montana Tariff		90.5.32		5477

Each of the above Interim Orders state that the Docket will be consolidated into the next USWC general rate case. Pursuant to ARM 38.2.3911 and the above Orders, the Commission hereby consolidates Docket Nos. 89.8.28, 89.8.35, 89.9.29 and 90.5.32 into this proceeding. Supplemental testimony may be necessary for the issues in these Dockets to be fully addressed.

The Commission has also stated the following upon approval of USWC toll forbearance filings:

Although the forbearance statute (Section 69-3-808, MCA) may not permit analysis of the economic merits of USWC's discounted sales prices in considering the forbearance application itself, the Commission intends to analyze the merits of such discount prices in later dockets. There is absolutely no evidence in the instant or past

forbearance applications that prices resulting from a negotiated contract or contracts for the services listed herein or in past applications will cover relevant economic costs. Further, no economic costs studies have been accepted by this Commission for USWC's toll services (see Order Nos. 5354d and 5354e, Docket No. 88.1.2). Therefore, USWC is hereby put on notice that to the extent any such sales prices resulting from a negotiated contract for the services listed herein fall below the Commission's estimate of relevant marginal costs, the resulting shortfall shall be borne by USWC shareholders.

The Commission will be examining these costs in the instant docket and may make revenue or rate design changes based upon its conclusions, as deemed appropriate.

Please be advised that other new USWC services have been approved by the PSC in tariff filings since the last general rate case (Docket No. 88.1.2). In addition, the rates for High Voltage Protection services were reduced on October 25, 1989. USWC Exchange and Network Services Tariff, Section 10.6.2.G. The Commission or parties may wish to address these matters in this case.

Other USWC tariff filings may be consolidated into this docket at a later date.

It is anticipated that all Open Network Architecture (ONA) type filings will be so consolidated.

DONE AND DATED THIS 21st day of March, 1991 by a vote of 4-1.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

HOWARD L. ELLIS, Chairman

DANNY OBERG, Vice Chairman
(Voting to Dissent)

BOB ANDERSON, Commissioner

JOHN B. DRISCOLL, Commissioner

WALLACE W. "WALLY" MERCER, Commissioner

ATTEST:

Ann Peck
Commission Secretary

(SEAL)